IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5278 of 2005
With
SPECIAL CIVIL APPLICATION No. 5279 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

==========

HUN KARABHAI SUMABHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

==========

Appearance :
MR CJ VIN for the Petitioners
MS MANISHA L SHAH, A.G.P. For Respondent Nos. 1 and 3.
MR PV HATHI for Respondent No.2
MR RC KAKKAD for Respondent No. 4

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/03/2006

ORAL JUDGMENT

In these petitions, the petitioners have challenged their termination orders passed by the employer i.e. Gujarat Ayurvedic University.

2. The facts leading to present petition are as follows:

2.1 The petitioner in Special Civil Application No. 5278 of 2005 claiming to be belonging to Scheduled Tribe, applied for being appointed for the post of Peon to be recruited by Respondent No.4. In support of his contention that he belongs to Scheduled Tribe community he had also produced certificate purported to have been issued by the competent authority. On the basis of his assertion that he belongs to Scheduled Tribe, he was appointed on the post in question on 21.02.2003.

3 The respondents however, had doubt about the status of the petitioner being a member of Scheduled Tribe community. Respondent No.4 therefore, passed impugned order dated 24.06.2004, by which the services of the petitioner came to be terminated. In the said order impugned in the present petition, it is stated that the caste certificate which the petitioner has produced is found to be not genuine. His service, therefore, was terminated with effect from 24.06.2004.

3.1 The stand of respondent No.4 as emerging from

the affidavit-in-reply filed before this Court is that the petitioner according to the said respondent had produced forged caste certificate while securing employment as a Scheduled Tribe member. It is the case of respondent No.4 that such certificate was not issued by the competent authority as sought to be suggested by the petitioner.

3.2 To come to such conclusion, respondent no.4 had verified the genuineness of the certificate produced by the petitioner by corresponding with Social Welfare Officer, District Panchayat, Jamnagar. It appears that on the basis of such correspondence, respondent No.4 found that such certificate was not issued by the said authority. Respondent No.4 therefore, passed impugned order terminating the services of the petitioner.

4. So far as the petitioner in Special Civil Application No. 5279 of 2005 is concerned, the facts are more or less similar. The petitioner herein also claims to be belonging to Scheduled Tribe community. He applied for appointment with respondent No.4 on the basis of producing Caste certificate. He was also selected and appointed for the post of Ward Attendant by order dated

21.02.2003. Once again here also respondent No.4 had doubt about the genuineness of the Caste certificate produced by the petitioner. Inquiries were made by the said authorities. Eventually, on the basis of correspondence, respondent No.4 came to the conclusion that the Caste certificate produced by the said petitioner was not genuine. His services were therefore, terminated from 24.06.2004 by the impugned order.

5. Respondent No.2 District Social Welfare Department has also filed affidavit-in-reply stating inter-alia that the Caste certificates have not been issued by the said Office.

6. It is not in dispute that both the petitioners were selected and appointed on respective posts through selection process. It is equally not in dispute that the petitioners were appointed on the respective posts in terms that they belong to Scheduled Tribe community. If the certificates produced by the petitioners are found to be not genuine, it is open for the respondents to take appropriate steps to terminate their services. The conclusion of Respondent No.4 however that the Caste certificate produced by the petitioners are not genuine,

cannot be arrived at through ex-parte inquiry without involving the petitioners in decision making process. As can be seen from the affidavit-in-reply filed by respondent No.4 filed in both the petitions, on the basis of some correspondence with the said authorities, the said respondent came to the conclusion that Caste certificate produced by the petitioners were not genuine. On the basis of such conclusion services of the petitioners came to be terminated. When the decision of Respondent No.4 is resulting into such adverse civil consequence as terminating the services of the petitioners, who were selected through selection process, they have a right to defend themselves and to make representation before the authorities that the certificates produced by them were not bogus. Without giving any opportunity to represent their case and without giving any opportunity of hearing, respondent no.4 came to ex-parte conclusion that the Caste certificates produced by the petitioners were not genuine.

7. In the result, impugned orders of terminating the services of petitioners both dated 24.06.2004 are quashed. It will be open for the respondents to inquire

into the genuineness of the caste certificates produced by the petitioners and come to fresh conclusion after giving reasonable opportunity of hearing to the petitioners in this regard. Pursuant to quashing of the impugned orders of termination, the petitioners may be entitled to reinstatement in service, the petitioners however will not be entitled to wages for intervening period and the question of said wages will depend upon the ultimate outcome of the fresh exercise that respondent No.4 may undertake. It may be noted that learned advocate for the petitioners also did not insist on payment of backwages for the intervening period before conclusion of fresh exercise.

8. In the result, petitions are allowed to the above extent. Rule is made absolute accordingly. No order as to costs.

[Akil Kureshi, J.]

satishcv